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March 5, 2018

**VIA EMAIL and REGULAR MAIL**

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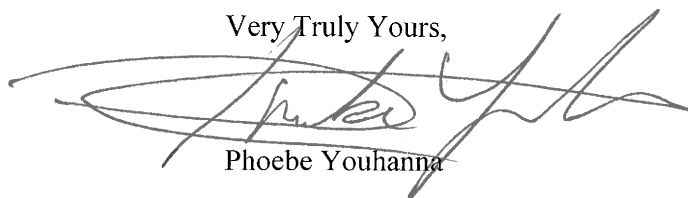
Re: **Supplemental Responses to CERCLA Request for Information relating to Canfield,  
M.C. Sons Superfund Site, Newark, New Jersey**

Dear Ms. Beitin,

Enclosed, please find the City of Newark's supplemental responses (supplementing its March, 2014 responses) to the United States Environmental Protection Agency's ("EPA") January 15, 2014 Request for Information pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*, regarding the above-mentioned site, as well as a disc containing responsive documents.

Should you wish to discuss this matter further, please do not hesitate to contact me.

Very Truly Yours,



Phoebe Youhanna

C: Angela G. Foster, Esq., First Assistant Corporation Counsel, City of Newark (via e-mail)  
Joanne Vos, Esq., (via e-mail)

**THE CITY OF NEWARK'S SUPPLEMENTAL RESPONSES TO  
THE U.S. ENVIRONMENTAL PROTECTION AGENCY'S  
REQUEST FOR INFORMATION PURSUANT TO CERCLA, 42 U.S.C. §9601, *et seq.*,  
RELATING TO THE CANFIELD, MC. SONS SUPERFUND SITE,  
NEWARK, NEW JERSEY**

The City of Newark ("Newark") hereby supplements its March 24, 2014 responses to the U.S. Environmental Protection Agency's ("EPA") January 15, 2014 Request for Information ("RFI") pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §9601, *et seq.*, relating to the Canfield, M.C. Sons Superfund Site (the "Site"), which is located in the area of 63-67 Cornerstone Lane and 52-56 Marrow Street and consists of Block 406, Lot 1 in the area of units 25.01, 25.02, 25.03, 25.10, 25.11 and 25.12 (formerly known as 93 Wilsey Street, Block 409, Lot 22 and 196 Newark Street, Block 409, Lot 31) in Newark, New Jersey.

Newark is supplementing its responses at this time, in recognition of its continuing obligation to do so, to reflect certain publicly available information contained within documents maintained by the City Clerk's office. Copies of responsive documents are being provided along with these supplemental responses, which have been Bates labeled with the prefix "Newark-Canfield" 00001 – 01472. Despite conducting a diligent inquiry, Newark has not identified any information or other documents that would be potentially responsive to EPA's specific questions about the Site. Newark reiterates at this time that it is entitled to local government immunity from CERCLA liability for property acquired through involuntary governmental action, as provided in Section 101(20)(D) of CERCLA, 42 U.S.C. § 9601(20)(D).

**General Objections and Limitations**

1. Newark objects to these requests to the extent they seek information that is not in its possession, custody or control. Newark expressly states that its responses to these requests are limited by the current availability of information and documents which Newark is currently required to maintain by law.
2. Newark objects to these requests to the extent that they seek information or documents maintained by other parties or information or documents that have already been produced to the EPA by other parties.
3. Newark objects to the extent that these requests, including the "Instruction" contained therein, purport to impose on Newark obligations beyond those required under CERCLA Section 104(e).
4. Nothing in these responses is intended to waive, restrict or otherwise impair any arguments or defenses to CERCLA liability or otherwise, and Newark hereby expressly preserves its right and ability to raise any and all such arguments and defenses.

### **Requests for Information**

- 1. State the dates during which the City owned, operated or leased any portion of the Site and provide copies of all documents evidencing or relating to such ownership and operation, including but not limited to resolutions for foreclosure, purchase and sale agreements, deeds, leases, etc.**

**Response to Question 1:** Despite conducting a diligent inquiry, and notwithstanding EPA's allegation that Newark acquired the Site by property tax foreclosure in 1976 and sold it to K. Hovnanian at Newark II in 1993, Newark has not been able to identify any documents or any individuals that can identify the specific dates of Newark's alleged ownership, operation, or leasing of the Site. By Resolution dated July 21, 1992, the Newark Municipal Council authorized the Department of Development to execute deeds transferring title to the property within the "University Heights Redevelopment Area" to K. Hovnanian at Newark II. (Newark-Canfield\_00017-18.) In a development proposal, the "University Heights Redevelopment Area" was described as larger than, but included, the Site, and was specifically described as "a rectangle in the Central and West Wards immediately adjacent to the central business district bounded by Washington Street, South Orange Avenue, Bergen Street, and Central Avenue." (Newark-Canfield\_00255.)

- 2. Please answer the following questions regarding the City's ownership of the Site:**

- a. Describe the Site at the time it was acquired. If there were any businesses at the Site at the time of acquisition or during the period of ownership, identify the nature of the businesses, where they were located, whether the building at 93 Wilsey Street was being utilized.**

**Response to Question 2(a):** Despite conducting a diligent inquiry, Newark has not been able to identify any documents or any individuals with potentially responsive information related to the description of the Site at the time Newark allegedly acquired it.

- b. Describe the condition of the Site as it existed when the City foreclosed on the Site. Including but not limited to:**
  - i. The physical state of the surface structures (e.g., buildings, tanks, machinery), including the contents and condition of such structures; and**
  - ii. All maps and drawings of the Site.**

**Response to Question 2(b):** Despite conducting a diligent inquiry, Newark has not been able to identify any documents or any individuals with potentially responsive information related to the condition of the Site at the time Newark allegedly foreclosed on it.

- c. Please explain what operation the City conducted at the Site during its ownership. Provide copies of all documents evidencing or relating to the**

**City's operation at the Site, including, written agreements, leases, etc., including any and all attachments, maps, etc.;**

**Response to Question 2(c):** Despite conducting a diligent inquiry, Newark has not been able to identify any documents or any individuals with potentially responsive information indicating that Newark conducted any operations at the Site at any time. A Planning Proposal for the Development of University Heights, dated November 25, 1985, describes the "University Heights area" as follows:

[w]ithin its limits are located four public institutions of higher education, the county government headquarters, a high school, several elementary schools, major avenues leading into Newark, residential areas, commercial retail areas, some industry, and many abandoned buildings and empty lots. Many of the empty lots and abandoned buildings belong to the City of Newark.

(Newark-Canfield\_00255.) In addition, on June 25, 1986, the Newark City Council passed a Resolution approving the Newark Central Planning Board's determination that several City Tax Blocks, including portions of Block 409, comprised a Blighted Area as defined by N.J.S.A. 40:55-21.1 *et seq.* (Newark-Canfield\_00528.) The Central Planning Board's Report of Findings indicated that:

[o]f the 147 City Lots [in the Blighted Area], 64.0% are vacant, unimproved land, and nearly half of that amount (37 Lots) have been vacant for a period of well over ten years. As clear evidence of a further advance of blight, 57 additional lots were turned into vacant land by demolition of unsafe structures, hazardous to life and limb of the steadily shrinking population of the area. Of the few remaining structures, nearly half (21) are substandard, in a deteriorated or dilapidated condition, and 15 of these are vacant and abandoned. (Newark-Canfield\_00536.)

- d. Did the City conduct any demolitions or make any renovations of the buildings or any other changes? If so please provide information regarding all demolitions or changes of any kind on, under or about the Site, its physical structures or to the property itself (e.g. excavation work);**

**Response to Question 2(d):** Newark objects to this request on the basis that the term "other changes" is not defined and the request is not specific as to dates or locations of demolition conducted by the City and is therefore vague and ambiguous. Subject to this objection and despite conducting a diligent inquiry, Newark has not been able to identify any documents or any individuals with potentially responsive information indicating that Newark conducted any demolition activities specifically at the Site at any time.

As it regards the broader University Heights Redevelopment Area, on November 26, 1985, the Newark Municipal Council adopted a motion to arrange for an analysis and survey of a portion of the University Heights area to determine what structures might be rehabilitated, but Newark has not been able to locate a copy of any final study and it is unclear if the Site was specifically considered during this study. (Newark-Canfield\_00644-45.)

With regard to demolition conducted by the City, between May and June 1983, Newark conducted certain emergency demolition activities within the University Heights area, but the Site was not included in that demolition work. (Newark-Canfield\_00646-00657.) On February 20, 1986, Newark issued a Request for Proposals for Development in the University Heights Area that provided the following with respect to Sites C, which did include the Site:

[t]he City shall be responsible to acquire title to all real property which constitutes the site, to relocate all current occupants from the site, to demolish all existing structures and to convey to the developer a deed of bargain and sale for each parcel of real property. These activities shall be done at the City's expense.

\* \* \*

a. Vacant land owned by the City shall be conveyed to the developer within 90 calendar days after the date of designation of the developer by the City. b. All other properties constituting the site shall be conveyed to the developer within 90 days after the taking of title to such property by the City and its successful demolition by the City, but in no event later than one calendar year after the date of the designation of the developer.

(Newark-Canfield\_01161-1162.) In addition, a memorandum from Newark Business Administrator, Thomas A. Banker, to the Municipal Council, dated June 18, 1986, which relates to the proposed University Heights redevelopment project and stabilization of that neighborhood area, indicates that "[a]ll vacant city owned buildings which are structurally unsound will be demolished this year," but does not indicate who will be conducting that demolition. (Newark-Canfield\_01359.)

Notwithstanding these documents, however, the actual Contract for the Sale of Land and Redevelopment of University Heights Redevelopment Project (the "Redevelopment Contract"), provides K. Hovnanian with a thirty percent (30%) credit against the purchase price for the properties within the redevelopment area to conduct demolition (*see* Response to Question 5(b)) (which may suggest that K. Hovnanian conducted any demolition required by the redevelopment project). (Newark-Canfield\_00050)

In addition, on June 25, 1986 the Newark Municipal Council approved a contract with the Newark Housing Authority for the purpose of having the Housing Authority perform certain technical assistance services for the redevelopment activities in the University Heights redevelopment project area. Those services included arranging for the removal or relocation of abandoned utility infrastructure, but did not include demolition services. (Newark-Canfield\_01363-01376.)

- e. Did the City conduct any site investigations prior to the approval of the area for redevelopment into residential units? If yes, describe all investigations of the Site undertaken prior to the approval of the area for the redevelopment into residential units;**

**Response to Question 2(e):** Newark objects to this request on the basis that the term “site investigations” is undefined and therefore vague and ambiguous. Subject to this objection and despite conducting a diligent inquiry, Newark has not been able to identify any documents or any individuals with potentially responsive information indicating that Newark itself conducted any site investigations specifically at the Site at any time.

As it regards the broader University Heights Redevelopment Area, Section 3.1c and 3.1d of the Redevelopment Contract collectively provided that K. Hovnanian would conduct due diligence, including soil analysis to determine if there existed “a toxic soil condition which will have a material adverse impact with respect to proper development or marketing of the subject properties,” which includes the Site. (Newark-Canfield\_00061-63.) In addition, Section 3.16 of the Redevelopment Contract provides that “[t]he City does not, however, make any representations or warranties as to the subsurface condition of the property and is offering the property “as is” . . . The Redeveloper shall be obligated to make his own determination and to conduct such site tests and other examinations as are necessary to determine the subsurface conditions.” (Newark-Canfield\_00077.)

As referenced earlier in question 2(c), the City produced a “Report of Findings” regarding a blight investigation of a portion of the University Heights Area that included Block 409 by the Central Planning Board. (Newark-Canfield\_00535 – 00538.) The Office of Planning and Grantsmanship prepared a Blight Investigation for The City of Area B which included the subject property, tax block 409, and was prepared on January 6, 1986. (Newark-Canfield\_00579 – 00608.)

- f. Before the Site was sold to K. Hovnanian was all appropriate inquiry (“AAI”) conducted? If so, state who conducted the AAI, describe the AAI standards that were conducted and what the AAI showed; and**

**Response to Question 2(f):** See Response to Question 2(e). In addition, by letter dated June 4, 1987, K. Hovnanian advised Newark that it discovered “toxic soil conditions” on the “University Heights property”. The letter, however, does not specifically identify on which portion(s) of the “University Heights property” those conditions were found. (Newark-Canfield\_00004-5.) The correspondence also indicates that Testwell Craig tested those soils and produced a report, apparently on behalf K. Hovnanian, but Newark has not been able to locate a copy of that report. Despite conducting a diligent inquiry, Newark has not been able to identify any documents or any individuals with potentially responsive information as to what standards were used by Testwell Craig in conducting this soil analysis.

- g. At the time of the sale of the Site, was the City aware of the former industrial use of the property?**

**Response to Question 2(g):** Despite conducting a diligent inquiry, Newark has not been able to identify any documents or any individuals with potentially responsive information indicating that Newark was aware of the Site's former industrial use.

**3. Answer the following questions regarding the building labeled P409-1 on the attachment labeled Figure 5 of the Environmental Assessment Report, University Heights Sites C and E, prepared by J.M. Sorge, Inc. dated August 1992 Bates number KHOV005887 (also known as the garage building) located on Wilsey Street:**

- a. What was the street address of this building;**
- b. State the condition of the building at the time that the City foreclosed on the Site;**
- c. Explain how the City utilized the building and the dates of operation;**
- d. Did the City make any alterations to the building or remove any of the equipment, if yes, please explain;**
- e. Identify who dismantled the equipment and removed it from the building;**
- f. State what was done with the equipment after it was removed;**
- g. State what was done with the leftover product and waste materials;**
- h. State the date when the building was demolished and by whom; describe in detail what was done with the demolition debris; and**
- i. Describe any excavation or site grading activities that may have been conducted by the City or its agents in association with or subsequent to demolition activities.**

**Response to Question 3:** Despite conducting a diligent inquiry, Newark has not been able to identify any documents or individuals with potentially responsive information in response to this question.

**4. Please provide copies of the following plans/drawings that were submitted to the City for the Society Hill at University Heights III development:**

- a. Society Hill at University Heights III, Site "C" and "E" of Redevelopment Plan Site Plan dated June 1992, revised October 1994 prepared by Najarian Associated including the Grading Plan;**
- b. Demolition Plan dated June 1992 prepared by Najarian Associated, including any revised versions; and**

- c. **Topographic Survey dated May 1992, revised June 1992 prepared by Richlan, Lupo & Pronesti including any revised versions.**

**Response to Question 4:** Despite conducting a diligent inquiry, Newark has not been able to identify the documents referred to in this request.

5. **EPA is aware that the City had an arrangement or "Redevelopment Contract" with K. Hovnanian regarding the construction of a condominium development on the Site (Society Hill at University Heights III) which was outlined in the Contract for the Sale of Land to Redeveloper between the City of Newark and K. Hovnanian dated January 27, 1987 ("Redevelopment Contract"). Describe in detail the arrangement the City had with K. Hovnanian. Include the following:**

- a. **State whether the City owned the Site at the time that construction activities began at the Site, including site preparation activities, grading, excavations, and demolition of buildings. Provide all details regarding each construction activity, including:**
  - i. **Description of each construction activity;**
  - ii. **Dates that the work took place; and**
  - iii. **Location of the work( provide copies of any maps, plans or drawings); and**

**Response to Question 5(a):** Section 3.10a of the Redevelopment Contract provides that "[t]he Redeveloper shall, within 30 days after the conveyance of the Property prepare the Property for redevelopment in accordance with the herein contract and appropriate conditions for Sites A, B, C, and E as further elaborated in this Contract. The commencement of demolition activity within 30 days after conveyance of title shall be considered commencement of construction." (Newark-Canfield\_00072, 00050-51.) Based on this language, Newark was required to convey the Property, which included the Site, to K. Hovnanian prior to the start of construction activities. Despite conducting a diligent inquiry, Newark has not been able to identify any documents or any individuals with additional responsive information related to this request.

- b. **Explain the demolition credit arrangement with K. Hovnanian as outlined in Section 2.3c of the Redevelopment Contract and provide a list of the City owned buildings that were demolished by K. Hovnanian.**

**Response to Question 5(b):** Section 2.3 of the Redevelopment Contract states: "[t]he parties agree that 30 percent of the purchase price paid for each site shall be set aside in an escrow account to be held by the City and used as a credit for demolition undertaken by the Redeveloper that would have been performed by the City. In accordance with the herein procedure, the City shall reimburse the Redeveloper for such demolition costs within 30 days after receipt of any and all documents evidencing the actual demolition costs incurred by the Redeveloper." (Newark-Canfield\_00050.) In addition, Section 3.16 of the Redevelopment Agreement provides that



“[t]he obligation for preparing the site for construction shall belong exclusively to the Redeveloper and the City shall bear no responsibility for any demolition work performed on all or part of the property.” (Newark-Canfield\_00077.) Despite conducting a diligent inquiry, Newark has not been able to identify any documents or any individuals with potentially responsive information regarding what City owned buildings may have been demolished by K. Hovnanian pursuant to the Redevelopment Agreement.

- 6. Did the City conduct any assessments or investigations of hazardous substances or hazardous wastes at the Site, including, but not limited to, soils at the Site? If yes,**
- a. Identify any environmental contractors and consultants the City retained;**
  - b. Provide the date(s) any and all assessments were performed; and**
  - c. Provide copies of any documents issued by the City's contractors or consultants that related to the results of sampling, assessment and/or recommended remediation at the Site.**

**Response to Question 6:** Despite conducting a diligent inquiry, Newark has not been able to identify any documents or any individuals with potentially responsive information indicating that Newark, or any contractors or consultants working on its behalf, conducted any assessments or investigations of hazardous substances or hazardous wastes at the Site at any time. Newark otherwise refers to its Responses to Questions 2(e) and 2(f).

- 7. List any hazardous substances that were present on the Site when the City acquired the Site. Describe the location and amount of each hazardous substance and how or whether it was contained at the Site.**

**Response to Question 7:** Despite conducting a diligent inquiry, Newark has not been able to identify any documents or any individuals with potentially responsive information related to this question.

Pursuant to the authority in Section 104(e)(2)(C) of CERCLA, 42 U.S.C. § 9604(e)(2)(C), EPA may require any person to furnish information relating to the ability of a person to pay for or to perform a cleanup. Therefore, please answer all of the following questions.

- 8. Are there currently or have there ever been any insurance policies in effect that may indemnify the City against any liability that it or any entity may incur in connection with the release of any hazardous substance at the Site? If your answer is in the affirmative, please provide a copy of the policy. For any policy that you cannot locate or obtain, provide the name of the carrier, years in effect, nature and extent of coverage, and any other information you have.**

**Response to Question 8:** Newark has previously conducted a thorough investigation of its historic insurance coverage program in prior matters involving environmental property damage, which revealed that Newark was self-insured for general liability, including property damage,

during all times after EPA alleges that Newark acquired the Site through tax foreclosure (i.e. 1976). Newark notes that Section 3.4b of the Redevelopment Contract required that Newark be named as an additional insured in any policies maintained by K. Hovnanian with respect to the construction operations performed as part of the University Heights Redevelopment Project, but Newark does not have a copy of any such policies if issued and does not know if any such policies would cover risks associated with the alleged release of hazardous substances at the Site. (Newark-Canfield\_00065-67.)

- 9. Did or does there exist any agreement or contract (other than an insurance policy) that may indemnify the City or may require the City to indemnify another person or any entity, against any liability the City or any entity may incur in connection with a release or threatened release of a hazardous substance at the Site? If your answer to this question is in the affirmative, please provide a copy of all such agreements or contracts.**

**Response to Question 9:** Section 3.31 (Environmental Cleanup Responsibility Act (the “Act)) of the Redevelopment Contract provides as follows:

[t]he parties agree that [Newark], if this project is covered by the Act, will make the necessary applications to the New Jersey Department of Environmental Protection, but [K. Hovnanian] shall have the economic burden of preparing these submittals. [K. Hovnanian] shall also be required to effect a cleanup with respect to the Land, if such a plan is necessary, in accordance with the Act and the regulations promulgated thereunder. Upon such acquisition, [K. Hovnanian] shall be responsible for any costs incurred by [Newark] subsequent to the date hereof in connection with such cleanup plan.

(Newark-Canfield\_00096-97). Despite conducting a diligent inquiry, Newark has not been able to identify any documents or any individuals with potentially responsive information that would indicate that Newark is required to indemnify any other person or entity with respect to this Site.

- 10. Identify each individual who assisted or was consulted by you in the preparation of the response to this Request for Information and specify the question to which such consultation or assistance was provided.**

**Response to Question 10:** Newark identifies the following individuals who assisted with or were consulted in the preparation of its supplemental responses to EPA’s RFI:

Angela G. Foster, Esq.  
First Assistant Corporation Counsel  
City of Newark

Eric E. Tomaszewski, Esq.  
Golub Isabel & Cervino, P.C.  
Former Outside Environmental Counsel

Joanne Vos, Esq.

Phoebe Youhanna, Esq.

Maraziti Falcon, L.L.P.

Current Outside Environmental Counsel

**CERTIFICATION OF ANSWERS TO REQUEST FOR INFORMATION**

**State of New Jersey**

**County of Essex**

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document (supplemental response to EPA Request for Information) and all documents submitted herewith, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete, and that all documents submitted herewith are complete and authentic unless otherwise indicated. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

\_\_\_\_\_  
Angela G. Foster, Esq.,  
First Assistant Corporation Counsel  
City of Newark

Sworn to me before this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

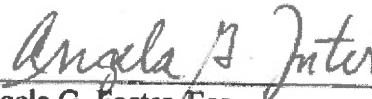
\_\_\_\_\_  
Notary Public

**CERTIFICATION OF ANSWERS TO REQUEST FOR INFORMATION**

**State of New Jersey**

**County of Essex**

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document (supplemental response to EPA Request for Information) and all documents submitted herewith, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete, and that all documents submitted herewith are complete and authentic unless otherwise indicated. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.



Angela G. Foster, Esq.,  
First Assistant Corporation Counsel  
City of Newark

Sworn to me before this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public